IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
Income Tax Application No.83 of 2002

The Commissioner of Income Tax. .. Applicant
v/s.
Ornamental Plants (P) Ltd. .. Respondent

Mr.A.N. Kotangale i/by Mr.H.D.Rathod for applicant.

Mr.S.J. Mehta for respondent.

CORAM : H.L. GOKHALE &
J.P. DEVADHAR, JJ.

DATED : 12th September 2006

P.C. :

1. Heard the learned Counsel for the parties.

2. Rule. Rule is made returnable forthwith.

3. We have perused the Application filed by the applicant as well as the order passed by CIT (Appeals). In our view, the question of law, which is framed in this matter, requires consideration. The question of law is as follows:-

> " Whether, on the facts and in the circumstances of the case the Tribunal was right in law in holding that the passing of an order by the Commissioner of Income

Tax (Appeals) in an appeal filed against the assessment order passed by the Assessing Officer results in the complete merger of the order of the Assessing Officer with the order of the CIT(A) ousting the jurisdiction of the Commissioner of Income tax to exercise his revisionary powers u/s. 263 of the I.T. Act, 1961 even on issues that were not the subject matter of appeal before the CIT(A) ?"

In fact, this question is covered in favour of the Revenue in a judgment in the case of **CIT vs. Shri Arbuda Mills Ltd. reported in 231 ITR 50**.

4. This being the position, we allow this Application and direct the Tribunal to state the case and refer it to this Court for its determination on the question of law as set out above.

5. In the circumstances aforesaid, the Application is allowed with no order as to costs.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)